

AMENDED IN SENATE APRIL 26, 2010

AMENDED IN SENATE APRIL 14, 2010

SENATE BILL

No. 879

Introduced by Senator Cox

January 12, 2010

An act to amend ~~Sections 20133 and 20175.2 of~~ *Section 20175.2 of, and to amend and repeal Section 20133 of, the Public Contract Code, relating to public contracts, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 879, as amended, Cox. ~~Construction~~ *Counties: cities: construction projects: alternative bidding procedures: design-build.*

Existing law authorizes counties to use alternative procedures, known as design-build, for bidding on construction projects in the county in excess of \$2,500,000, in accordance with specified procedures. *These procedures include a requirement for contracts awarded, as specified, that a county board of supervisors pay a fee into the State Public Works Enforcement Fund, which funds are continuously appropriated for the Department of Industrial Relations' enforcement of prevailing wage requirements on public works projects.* Each county that elects to use the design-build method on a public works project is required to submit a report to the Legislative Analyst's Office before December 1, 2009, containing a description of each public works project procured through the design-build process and completed after November 1, 2004, and before November 1, 2009. Existing law also requires the Legislative Analyst, on or before January 1, 2010, to report to the Legislature on the use of the design-build method by counties.

This bill would, instead, authorize counties to use these alternative procedures, known as design-build, for bidding on construction projects

in the county in excess of \$1,000,000, and would make various changes in the procedures required for the use of design-build by those counties, as specified. The bill would also ~~repeal~~ *revise* those reporting provisions *to require each county electing to use the design-build method on a public works project to submit to the Legislative Analyst's Office before December 1, 2014, a report containing a description of each public works project procured through the design-build process and completed after November 1, 2009, and before November 1, 2014.*

Existing law authorizing design-build contracts for county construction projects is effective only until January 1, 2011, and as of that date is repealed.

~~This bill would delete that repeal date, thereby making the county design-build provisions operative indefinitely~~ *extend the effective and repeal date until January 1, 2016. By extending the terms of a continuously appropriated special fund, the bill would make an appropriation.*

Existing law also authorizes cities, *until January 1, 2016*, to use alternative procedures, known as design-build, for bidding on construction projects in the city in excess of \$1,000,000. *These procedures also require a city council to pay a fee into the State Public Works Fund, a continuously appropriated fund for the Department of Industrial Relation's enforcement of prevailing wage requirements on public works projects.*

This bill would make various changes in the procedures required for the use of design-build by those cities, as specified.

Vote: majority. Appropriation: ~~no~~ *yes*. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 20133 of the Public Contract Code is
- 2 amended to read:
- 3 20133. (a) A county, with approval of the board of
- 4 supervisors, may utilize an alternative procedure for bidding on
- 5 construction projects in the county in excess of one million dollars
- 6 (\$1,000,000) and may award the project using either the lowest
- 7 responsible bidder or by best value.
- 8 (b) (1) It is the intent of the Legislature to enable counties to
- 9 utilize design-build for buildings and county sanitation wastewater
- 10 treatment facilities. It is not the intent of the Legislature to

1 authorize this procedure for other infrastructure, including, but not
2 limited to, streets and highways, public rail transit, or water
3 resources facilities and infrastructures.

4 (2) The Legislature also finds and declares that utilizing a
5 design-build contract requires a clear understanding of the roles
6 and responsibilities of each participant in the design-build process.

7 (3) (A) For contracts awarded prior to either the effective date
8 of regulations adopted by the Department of Industrial Relations
9 pursuant to subdivision (b) of Section 1771.55 of the Labor Code
10 or the fees established by the department pursuant to subparagraph
11 (B), if the board of supervisors elects to proceed under this section,
12 the board of supervisors shall establish and enforce for design-build
13 projects a labor compliance program containing the requirements
14 outlined in Section 1771.5 of the Labor Code, or it shall contract
15 with a third party to operate a labor compliance program containing
16 the requirements outlined in Section 1771.5 of the Labor Code.
17 This requirement shall not apply to any project where the county
18 or the design-build entity has entered into any collective bargaining
19 agreement or agreements that bind all of the contractors performing
20 work on the projects.

21 (B) For contracts awarded on or after both the effective date of
22 regulations adopted by the Department of Industrial Relations
23 pursuant to subdivision (b) of Section 1771.55 of the Labor Code
24 and the fees established by the department pursuant to this
25 subparagraph, the board of supervisors shall pay a fee to the
26 department, in an amount that the department shall establish, and
27 as it may from time to time amend, sufficient to support the
28 department's costs in ensuring compliance with and enforcing
29 prevailing wage requirements on the project, and labor compliance
30 enforcement as set forth in subdivision (b) of Section 1771.55. All
31 fees collected pursuant to this paragraph shall be deposited in the
32 State Public Works Enforcement Fund created by Section 1771.3
33 of the Labor Code, and shall be used only for enforcement of
34 prevailing wages requirements on those projects.

35 (C) The Department of Industrial Relations may waive the fee
36 set forth in subparagraph (B) if the board of supervisors has
37 previously been granted approval by the director to initiate and
38 operate a labor compliance program on its projects and requests
39 to continue to operate that labor compliance program on its projects
40 in lieu of labor compliance by the department pursuant to

1 subdivision (b) of Section 1771.55. The fee shall not be waived
2 for the board of supervisors if it contracts with a third party to
3 initiate and enforce labor compliance programs on its projects.

4 (c) As used in this section:

5 (1) “Best value” means a value determined by objective criteria
6 related to price, features, functions, and life-cycle costs.

7 (2) “Design-build” means a procurement process in which both
8 the design and construction of a project are procured from a single
9 entity.

10 (3) “Design-build entity” means a partnership, corporation, or
11 other legal entity that is able to provide appropriately licensed
12 contracting, architectural, and engineering services as needed
13 pursuant to a design-build contract.

14 (4) “Project” means the construction of a building and
15 improvements directly related to the construction of a building,
16 and county sanitation wastewater treatment facilities, but does not
17 include the construction of other infrastructure, including, but not
18 limited to, streets and highways, public rail transit, or water
19 resources facilities and infrastructure.

20 (d) Design-build projects shall progress in a four-step process,
21 as follows:

22 (1) (A) The county shall prepare a set of documents setting
23 forth the scope of the project. The documents may include, but are
24 not limited to, the size, type, and desired design character of the
25 public improvement, performance specifications covering the
26 quality of materials, equipment, and workmanship, preliminary
27 plans or building layouts, or any other information deemed
28 necessary to describe adequately the county’s needs. The
29 performance specifications and any plans shall be prepared by a
30 design professional who is duly licensed and registered in
31 California.

32 (B) Any architect or engineer retained by the county to assist
33 in the development of the project specific documents shall not be
34 eligible to participate in the preparation of a bid with any
35 design-build entity for that project.

36 (2) (A) Based on the documents prepared in paragraph (1), the
37 county shall prepare a request for proposals that invites interested
38 parties to submit competitive sealed proposals in the manner
39 prescribed by the county. The request for proposals shall include,
40 but is not limited to, the following elements:

1 (i) Identification of the basic scope and needs of the project or
2 contract, the expected cost range, and other information deemed
3 necessary by the county to inform interested parties of the
4 contracting opportunity, to include the methodology that will be
5 used by the county to evaluate proposals and specifically if the
6 contract will be awarded to the lowest responsible bidder.

7 (ii) Significant objective factors that the county reasonably
8 expects to consider in evaluating proposals, including cost or price
9 and all nonprice related factors.

10 (iii) The relative importance of weight assigned to each of the
11 factors identified in the request for proposals.

12 (B) With respect to clause (iii) of subparagraph (A), if a
13 nonweighted system is used, the agency shall specifically disclose
14 whether all evaluation factors other than cost or price when
15 combined are:

16 (i) Significantly more important than cost or price.

17 (ii) Approximately equal in importance to cost or price.

18 (iii) Significantly less important than cost or price.

19 (C) If the county chooses to reserve the right to hold discussions
20 or negotiations with responsive bidders, it shall so specify in the
21 request for proposal and shall publish separately or incorporate
22 into the request for proposal applicable rules and procedures to be
23 observed by the county to ensure that any discussions or
24 negotiations are conducted in good faith.

25 (3) (A) The county shall establish a procedure to prequalify
26 design-build entities using a standard questionnaire developed by
27 the county. In preparing the questionnaire, the county shall consult
28 with the construction industry, including representatives of the
29 building trades and surety industry. This questionnaire shall require
30 information including, but not limited to, all of the following:

31 (i) If the design-build entity is a partnership, limited partnership,
32 or other association, a listing of all of the partners, general partners,
33 or association members known at the time of bid submission who
34 will participate in the design-build contract, including, but not
35 limited to, mechanical subcontractors.

36 (ii) Evidence that the members of the design-build entity have
37 completed, or demonstrated the experience, competency, capability,
38 and capacity to complete, projects of similar size, scope, or
39 complexity, and that proposed key personnel have sufficient
40 experience and training to competently manage and complete the

1 design and construction of the project, as well as a financial
2 statement that assures the county that the design-build entity has
3 the capacity to complete the project.

4 (iii) The licenses, registration, and credentials required to design
5 and construct the project, including information on the revocation
6 or suspension of any license, credential, or registration.

7 (iv) Evidence that establishes that the design-build entity has
8 the capacity to obtain all required payment and performance
9 bonding, liability insurance, and errors and omissions insurance.

10 (v) Any prior serious or willful violation of the California
11 Occupational Safety and Health Act of 1973, contained in Part 1
12 (commencing with Section 6300) of Division 5 of the Labor Code,
13 or the federal Occupational Safety and Health Act of 1970 (P.L.
14 91-596), settled against any member of the design-build entity,
15 and information concerning workers' compensation experience
16 history and worker safety program.

17 (vi) Information concerning any debarment, disqualification,
18 or removal from a federal, state, or local government public works
19 project. Any instance in which an entity, its owners, officers, or
20 managing employees submitted a bid on a public works project
21 and were found to be nonresponsive, or were found by an awarding
22 body not to be a responsible bidder.

23 (vii) Any instance in which the entity, or its owners, officers,
24 or managing employees, defaulted on a construction contract.

25 (viii) Any violations of the Contractors' State License Law
26 (Chapter 9 (commencing with Section 7000) of Division 3 of the
27 Business and Professions Code), excluding alleged violations of
28 federal or state law including the payment of wages, benefits,
29 apprenticeship requirements, or personal income tax withholding,
30 or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec.
31 3101 et seq.) withholding requirements settled against any member
32 of the design-build entity.

33 (ix) Information concerning the bankruptcy or receivership of
34 any member of the design-build entity, including information
35 concerning any work completed by a surety.

36 (x) Information concerning all settled adverse claims, disputes,
37 or lawsuits between the owner of a public works project and any
38 member of the design-build entity during the five years preceding
39 submission of a bid pursuant to this section, in which the claim,
40 settlement, or judgment exceeds fifty thousand dollars (\$50,000).

1 Information shall also be provided concerning any work completed
2 by a surety during this period.

3 (xi) In the case of a partnership or ~~other association~~, *an*
4 *association* that is not a legal entity, a copy of the agreement
5 creating the partnership or association and specifying that all
6 partners or association members agree to be fully liable for the
7 performance under the design-build contract.

8 (xii) (I) Any instance in which the entity, or any of its members,
9 owners, officers, or managing employees was ever determined by
10 a court of competent jurisdiction to have submitted, or legally
11 admitted for purposes of a settlement agreement or criminal plea
12 to have submitted either of the following:

13 (ia) Any claim to any public agency or official in violation of
14 the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.).

15 (ib) Any claim to any public official in violation of the
16 California False Claims Act (Article 9 (commencing with Section
17 12650) of Chapter 6 of Part 2 of Division 3 of the Government
18 Code).

19 (II) Information provided pursuant to this subdivision shall
20 include the name and number of any case filed, the court in which
21 it was filed, and the date on which it was filed. The entity may
22 also provide further information regarding any such instance,
23 including any mitigating or extenuating circumstances that the
24 entity wishes the county to consider.

25 (B) The information required pursuant to this subdivision shall
26 be verified under oath by the entity and its members in the manner
27 in which civil pleadings in civil actions are verified. Information
28 that is not a public record pursuant to the California Public Records
29 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
30 of Title 1 of the Government Code) shall not be open to public
31 inspection.

32 (4) The county shall establish a procedure for final selection of
33 the design-build entity. Selection shall be based on either of the
34 following criteria:

35 (A) A competitive bidding process resulting in lump-sum bids
36 by the prequalified design-build entities. Awards shall be made to
37 the lowest responsible bidder.

38 (B) A county may use a design-build competition based upon
39 best value and other criteria set forth in paragraph (2). The
40 design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design, and construction expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the county shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the county's second and third ranked design-build entities.

(v) For purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if ~~their~~ *its* experience modification rate for the most recent three-year period is an average of 1.00 or less, and ~~their~~ *its* average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign

1 services, and errors and omission insurance coverage sufficient to
2 cover all design and architectural services provided in the contract.
3 This section does not prohibit a general or engineering contractor
4 from being designated the lead entity on a design-build entity for
5 the purposes of purchasing necessary bonding to cover the activities
6 of the design-build entity.

7 (2) Any payment or performance bond written for the purposes
8 of this section shall be written using a bond form developed by
9 the county.

10 (f) All subcontractors that were not listed by the design-build
11 entity in accordance with clause (i) of subparagraph (A) of
12 paragraph (3) of subdivision (d) shall be awarded by the
13 design-build entity in accordance with the design-build process
14 set forth by the county in the design-build package. All
15 subcontractors bidding on contracts pursuant to this section shall
16 be afforded the protections contained in Chapter 4 (commencing
17 with Section 4100) of Part 1. The design-build entity shall do both
18 of the following:

19 (1) Provide public notice of the availability of work to be
20 subcontracted in accordance with the publication requirements
21 applicable to the competitive bidding process of the county.

22 (2) Provide a fixed date and time on which the subcontracted
23 work will be awarded in accordance with the procedure established
24 pursuant to this section.

25 (g) Lists of subcontractors, bidders, and bid awards relating to
26 the project shall be submitted by the design-build entity to the
27 awarding body within 14 days of the award. These documents are
28 deemed to be public records and shall be available for public
29 inspection pursuant to this chapter and Article 1 (commencing
30 with Section 6250) of Chapter 3.5 of Division 7 of the Government
31 Code.

32 (h) The minimum performance criteria and design standards
33 established pursuant to paragraph (1) of subdivision (d) shall be
34 adhered to by the design-build entity. Any deviations from those
35 standards may only be allowed by written consent of the county.

36 (i) The county may retain the services of a design professional
37 or construction project manager, or both, throughout the course of
38 the project in order to ensure compliance with this section.

39 (j) Contracts awarded pursuant to this section shall be valid until
40 the project is completed.

(k) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(l) (1) If the county elects to award a project pursuant to this section, retention proceeds withheld by the county from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the county and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the county and the design-build entity from any payment made by the design-build entity to the subcontractor.

~~(m) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.~~

(m) Each county that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2014, a report containing a description of each public works project procured through the design-build process and completed after November 1, 2009, and before November 1, 2014. The report shall include, but shall not be limited to, all of the following information:

(1) The type of project.

(2) The gross square footage of the project.

(3) The design-build entity that was awarded the project.

(4) The estimated and actual length of time to complete the project.

(5) The estimated and actual project costs.

(6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.

(7) An assessment of the prequalification process and criteria.

1 (8) *An assessment of the effect of retaining 5 percent retention*
2 *on the project.*

3 (9) *A description of the Labor Force Compliance Program and*
4 *an assessment of the project impact, where required.*

5 (10) *A description of the method used to award the contract. If*
6 *best value was the method, the report shall describe the factors*
7 *used to evaluate the bid, including the weighting of each factor*
8 *and an assessment of the effectiveness of the methodology.*

9 (11) *An assessment of the project impact of “skilled labor force*
10 *availability.”*

11 (12) *An assessment of the design-build dollar limits on county*
12 *projects. This assessment shall include projects where the county*
13 *wanted to use design-build and was precluded by the dollar*
14 *limitation. This assessment shall also include projects where the*
15 *best value method was not used due to dollar limitations.*

16 (13) *An assessment of the most appropriate uses for the*
17 *design-build approach.*

18 (n) *Any county that elects not to use the authority granted by*
19 *this section may submit a report to the Legislative Analyst’s Office*
20 *explaining why the county elected not to use the design-build*
21 *method.*

22 (o) *On or before January 1, 2015, the Legislative Analyst shall*
23 *report to the Legislature on the use of the design-build method by*
24 *counties pursuant to this section, including the information listed*
25 *in subdivision (m). The report may include recommendations for*
26 *modifying or extending this section.*

27 (p) *Except as provided in this section, this act shall not be*
28 *construed to affect the application of any other law.*

29 (q) *This section shall remain in effect only until January 1, 2016,*
30 *and as of that date is repealed, unless a later enacted statute, that*
31 *is enacted before January 1, 2016, deletes or extends that date.*

32 SEC. 2. Section 20175.2 of the Public Contract Code is
33 amended to read:

34 20175.2. (a) (1) A city, with approval of the appropriate city
35 council, may utilize an alternative procedure for bidding on
36 building construction projects in the city in excess of one million
37 dollars (\$1,000,000), except as provided in subdivision (p).

38 (2) Cities may award the project using either the lowest
39 responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable cities to utilize cost-effective options for building and modernizing public facilities. The Legislature also recognizes the national trend, including authorization in California, to allow public entities to utilize design-build contracts as a project delivery method. It is not the intent of the Legislature to authorize this procedure for transportation facilities, including, but not limited to, roads and bridges.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process. The Legislature also finds that the cost-effective benefits to cities are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(3) It is the intent of the Legislature to provide an alternative and optional procedure for bidding and building construction projects for cities.

(4) The design-build approach may be used, but is not limited to use, when it is anticipated that it will: reduce project cost, expedite project completion, or provide design features not achievable through the design-bid-build method.

(5) (A) For contracts awarded prior to the effective date of either the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code or the fees established by the department pursuant to subparagraph (B), if a city council elects to proceed under this section, the city council shall establish and enforce, for design-build projects, a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the city or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(B) For contracts awarded on or after the effective date of both the regulations adopted by the Department of Industrial Relations pursuant to subdivision (b) of Section 1771.55 of the Labor Code and the fees established by the department pursuant to this subparagraph, the city council shall pay a fee to the department,

1 in an amount that the department shall establish, and as it may
2 from time to time amend, sufficient to support the department's
3 costs in ensuring compliance with and enforcing prevailing wage
4 requirements on the project, and labor compliance enforcement as
5 set forth in subdivision (b) of Section 1771.55. All fees collected
6 pursuant to this paragraph shall be deposited in the State Public
7 Works Enforcement Fund created by Section 1771.3 of the Labor
8 Code, and shall be used only for enforcement of prevailing wage
9 requirements on those projects.

10 (C) The Department of Industrial Relations may waive the fee
11 set forth in subparagraph (2) if the city council has previously been
12 granted approval by the director to initiate and operate a labor
13 compliance program on its projects and requests to continue to
14 operate that labor compliance program on its projects in lieu of
15 labor compliance by the department pursuant to subdivision (b)
16 of Section 1771.55. The fee shall not be waived for the city council
17 if it contracts with a third party to initiate and enforce labor
18 compliance programs on its projects.

19 (c) As used in this section:

20 (1) "Best value" means a value determined by objectives relative
21 to price, features, functions, and life-cycle costs.

22 (2) "Design-build" means a procurement process in which both
23 the design and construction of a project are procured from a single
24 entity.

25 (3) "Design-build entity" means a partnership, corporation, or
26 other legal entity that is able to provide appropriately licensed
27 contracting, architectural, and engineering services, as needed,
28 pursuant to a design-build contract.

29 (4) "Project" means the construction of a building and
30 improvements directly related to the construction of a building,
31 but does not include streets and highways, public rail transit, or
32 water resource facilities and infrastructure.

33 (d) Design-build projects shall progress in a four-step process,
34 as follows:

35 (1) (A) The city shall prepare a set of documents setting forth
36 the scope of the project. The documents may include, but are not
37 limited to, the size, type, and desired design character of the
38 buildings and site, performance specifications covering the quality
39 of materials, equipment, and workmanship, preliminary plans or
40 building layouts, or any other information deemed necessary to

1 describe adequately the city's needs. The performance
2 specifications and any plans shall be prepared by a design
3 professional who is duly licensed and registered in California.

4 (B) Any architect or engineer retained by the city to assist in
5 the development of the project-specific documents shall not be
6 eligible to participate in the preparation of a bid with any
7 design-build entity for that project.

8 (2) (A) Based on the documents prepared in paragraph (1), the
9 city shall prepare a request for proposals that invites interested
10 parties to submit competitive sealed proposals in the manner
11 prescribed by the city. The request for proposals shall include, but
12 is not limited to, the following elements:

13 (i) Identification of the basic scope and needs of the project or
14 contract, the expected cost range, and other information deemed
15 necessary by the city to inform interested parties of the contracting
16 opportunity, to include the methodology that will be used by the
17 city to evaluate proposals, and specifically if the contract will be
18 awarded to the lowest responsible bidder.

19 (ii) Significant objective factors which the city reasonably
20 expects to consider in evaluating proposals, including cost or price
21 and all nonprice related factors.

22 (iii) The relative importance of weight assigned to each of the
23 factors identified in the request for proposals.

24 (B) With respect to clause (iii) of subparagraph (A), if a
25 nonweighted system is used, the agency shall specifically disclose
26 whether all evaluation factors, other than cost or price, when
27 combined are:

28 (i) Significantly more important than cost or price.

29 (ii) Approximately equal in importance to cost or price.

30 (iii) Significantly less important than cost or price.

31 (C) If the city chooses to reserve the right to hold discussions
32 or negotiations with responsive bidders, it shall so specify in the
33 request for proposal and shall publish separately, or incorporate
34 into the request for proposal, applicable rules and procedures to
35 be observed by the city to ensure that any discussions or
36 negotiations are conducted in good faith.

37 (3) (A) The city shall establish a procedure to prequalify
38 design-build entities using a standard questionnaire developed by
39 the city. In preparing the questionnaire, the city shall consult with
40 the construction industry, including representatives of the building

1 trades and surety industry. This questionnaire shall require
2 information including, but not limited to, all of the following:

3 (i) If the design-build entity is a partnership, limited partnership,
4 or other association, a listing of all of the partners, general partners,
5 or association members known at the time of bid submission who
6 will participate in the design-build contract, including, but not
7 limited to, mechanical subcontractors.

8 (ii) Evidence that the members of the design-build entity have
9 completed, or demonstrated the experience, competency, capability,
10 and capacity to complete projects of similar size, scope, or
11 complexity, and that proposed key personnel have sufficient
12 experience and training to competently manage and complete the
13 design and construction of the project, as well as a financial
14 statement that assures the city that the design-build entity has the
15 capacity to complete the project.

16 (iii) The licenses, registration, and credentials required to design
17 and construct the project, including information on the revocation
18 or suspension of any license, credential, or registration.

19 (iv) Evidence that establishes that the design-build entity has
20 the capacity to obtain all required payment and performance
21 bonding, liability insurance, and errors and omissions insurance.

22 (v) Any prior serious or willful violation of the California
23 Occupational Safety and Health Act of 1973, contained in Part 1
24 (commencing with Section 6300) of Division 5 of the Labor Code
25 or the federal Occupational Safety and Health Act of 1970 (Public
26 Law 91-596) settled against any member of the design-build entity,
27 and information concerning workers' compensation experience
28 history and worker safety program.

29 (vi) Information concerning any debarment, disqualification,
30 or removal from a federal, state, or local government public works
31 project. Any instance where an entity, its owners, officers, or
32 managing employees submitted a bid on a public works project
33 and were found to be nonresponsive, or were found by an awarding
34 body not to be a responsible bidder.

35 (vii) Any instance where the entity, its owners, officers, or
36 managing employees defaulted on a construction contract.

37 (viii) Any violations of the Contractors' State License Law
38 (Chapter 9 (commencing with Section 7000) of Division 3 of the
39 Business and Professions Code), excluding alleged violations of
40 federal or state law including the payment of wages, benefits,

1 apprenticeship requirements, or personal income tax withholding,
2 or of Federal Insurance Contribution Act (FICA) withholding
3 requirements settled against any member of the design-build entity.

4 (ix) Information concerning the bankruptcy or receivership of
5 any member of the design-build entity, including information
6 concerning any work completed by a surety.

7 (x) Information concerning all settled adverse claims, disputes,
8 or lawsuits between the owner of a public works project and any
9 member of the design-build entity during the five years preceding
10 submission of a bid pursuant to this section, in which the claim,
11 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
12 Information shall also be provided concerning any work completed
13 by a surety during this period.

14 (xi) In the case of a partnership or ~~other~~ *an* association that is
15 not a legal entity, a copy of the agreement creating the partnership
16 or association and specifying that all partners or association
17 members agree to be fully liable for the performance under the
18 design-build contract.

19 (xii) (I) Any instance in which the entity, or any of its members,
20 owners, officers, or managing employees was ever determined by
21 a court of competent jurisdiction to have submitted, or legally
22 admitted for purposes of a settlement agreement or criminal plea
23 to have submitted either of the following:

24 (ia) Any claim to any public agency or official in violation of
25 the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.).

26 (ib) Any claim to any public official in violation of the
27 California False Claims Act (Article 9 (commencing with Section
28 12650) of Chapter 6 of Part 2 of Division 3 of the Government
29 Code).

30 (II) Information provided pursuant to this subdivision shall
31 include the name and number of any case filed, the court in which
32 it was filed, and the date on which it was filed, and the date on
33 which it was filed. The entity may also provide further information
34 regarding any such instance, including any mitigating or
35 extenuating circumstances that the entity wishes the city to
36 consider.

37 (B) The information required pursuant to this subdivision shall
38 be verified under oath by the entity and its members in the manner
39 in which civil pleadings in civil actions are verified. Information
40 that is not a public record pursuant to the California Public Records

1 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
2 of Title 1 of the Government Code) shall not be open to public
3 inspection.

4 (4) The city shall establish a procedure for final selection of the
5 design-build entity. Selection shall be based on either of the
6 following criteria:

7 (A) A competitive bidding process resulting in lump-sum bids
8 by the prequalified design-build entities. Awards shall be made to
9 the lowest responsible bidder.

10 (B) The city may use a design-build competition based upon
11 best value and other criteria set forth in paragraph (2) of
12 subdivision (d). The design-build competition shall include the
13 following elements:

14 (i) Competitive proposals shall be evaluated by using only the
15 criteria and selection procedures specifically identified in the
16 request for proposal. However, the following minimum factors
17 shall each represent at least 10 percent of the total weight of
18 consideration given to all criteria factors: price, technical design
19 and construction expertise, life-cycle costs over 15 years or more,
20 skilled labor force availability, and acceptable safety record. ~~Each~~
21 ~~of these factors shall be weighted equally.~~

22 (ii) Once the evaluation is complete, the top three responsive
23 bidders shall be ranked sequentially from the most advantageous
24 to the least.

25 (iii) The award of the contract shall be made to the responsible
26 bidder whose proposal is determined, in writing, to be the most
27 advantageous.

28 (iv) Notwithstanding any provision of this code, upon issuance
29 of a contract award, the city shall publicly announce its award,
30 identifying the contractor to whom the award is made, along with
31 a written decision supporting its contract award and stating the
32 basis of the award. The notice of award shall also include the city's
33 second and third ranked design-build entities.

34 (v) For purposes of this paragraph, "skilled labor force
35 availability" shall be determined by the existence of an agreement
36 with a registered apprenticeship program, approved by the
37 California Apprenticeship Council, which has graduated
38 apprentices in each of the preceding five years. This graduation
39 requirement shall not apply to programs providing apprenticeship
40 training for any craft that has been deemed by the Department of

1 Labor and the Department of Industrial Relations to be an
2 apprenticeable craft in the five years prior to enactment of this act.

3 (vi) For purposes of this paragraph, a bidder's "safety record"
4 shall be deemed "acceptable" if ~~their~~ *its* experience modification
5 rate for the most recent three-year period is an average of 1.00 or
6 less, and ~~their~~ *its* average total recordable injury/illness rate and
7 average lost work rate for the most recent three-year period does
8 not exceed the applicable statistical standards for its business
9 category, or if the bidder is a party to an alternative dispute
10 resolution system, as provided for in Section 3201.5 of the Labor
11 Code.

12 (e) (1) Any design-build entity that is selected to design and
13 build a project pursuant to this section shall possess or obtain
14 sufficient bonding to cover the contract amount for nondesign
15 services and errors and omissions insurance coverage sufficient
16 to cover all design and architectural services provided in the
17 contract. This section does not prohibit a general or engineering
18 contractor from being designated the lead entity on a design-build
19 entity for the purposes of purchasing necessary bonding to cover
20 the activities of the design-build entity.

21 (2) Any payment or performance bond written for the purposes
22 of this section shall be written using a bond form developed by
23 the city.

24 (f) All subcontractors that were not listed by the design-build
25 entity in accordance with clause (i) of subparagraph (A) of
26 paragraph (3) of subdivision (d) shall be awarded by the
27 design-build entity in accordance with the design-build process
28 set forth by the city in the design-build package. All subcontractors
29 bidding on contracts pursuant to this section shall be afforded the
30 protections contained in Chapter 4 (commencing with Section
31 4100) of Part 1. The design-build entity shall do both of the
32 following:

33 (1) Provide public notice of the availability of work to be
34 subcontracted in accordance with the publication requirements
35 applicable to the competitive bidding process of the city.

36 (2) Provide a fixed date and time on which the subcontracted
37 work will be awarded in accordance with the procedure established
38 pursuant to this section.

39 (g) Lists of subcontractors, bidders, and bid awards relating to
40 the project shall be submitted by the design-build entity to the

1 awarding body within 14 days of the award. These documents are
2 deemed to be public records and shall be available for public
3 inspection pursuant to this chapter and Article 1 (commencing
4 with Section 6250) of Chapter 3.5 of Division 7 of the Government
5 Code.

6 (h) The minimum performance criteria and design standards
7 established pursuant to paragraph (1) of subdivision (d) shall be
8 adhered to by the design-build entity. Any deviations from those
9 standards may only be allowed by written consent of the city.

10 (i) The city may retain the services of a design professional or
11 construction project manager, or both, throughout the course of
12 the project in order to ensure compliance with this section.

13 (j) Contracts awarded pursuant to this section shall be valid until
14 the project is completed.

15 (k) Nothing in this section is intended to affect, expand, alter,
16 or limit any rights or remedies otherwise available at law.

17 (l) (1) If the city elects to award a project pursuant to this
18 section, retention proceeds withheld by the city from the
19 design-build entity shall not exceed 5 percent if a performance and
20 payment bond, issued by an admitted surety insurer, is required in
21 the solicitation of bids.

22 (2) In a contract between the design-build entity and the
23 subcontractor, and in a contract between a subcontractor and any
24 subcontractor thereunder, the percentage of the retention proceeds
25 withheld may not exceed the percentage specified in the contract
26 between the city and the design-build entity. If the design-build
27 entity provides written notice to any subcontractor who is not a
28 member of the design-build entity, prior to or at the time the bid
29 is requested, that a bond may be required and the subcontractor
30 subsequently is unable or refuses to furnish a bond to the
31 design-build entity, then the design-build entity may withhold
32 retention proceeds in excess of the percentage specified in the
33 contract between the city and the design-build entity from any
34 payment made by the design-build entity to the subcontractor.

35 (m) Each city that elects to proceed under this section and uses
36 the design-build method on a public works project shall submit to
37 the Legislative Analyst's Office before December 1, 2014, a report
38 containing a description of each public works project procured
39 through the design-build process that is completed after January

1 1, 2011, and before November 1, 2014. The report shall include,
2 but shall not be limited to, all of the following information:

- 3 (1) The type of project.
- 4 (2) The gross square footage of the project.
- 5 (3) The design-build entity that was awarded the project.
- 6 (4) The estimated and actual project costs.
- 7 (5) *The estimated and actual length of time to complete the*
8 *project.*

9 ~~(5)~~
10 (6) A description of any written protests concerning any aspect
11 of the solicitation, bid, proposal, or award of the design-build
12 project, including the resolution of the protests.

13 ~~(6)~~
14 (7) An assessment of the prequalification process and criteria.

15 ~~(7)~~
16 (8) An assessment of the effect of retaining 5 percent retention
17 on the project.

18 ~~(8)~~
19 (9) A description of the Labor Force Compliance Program and
20 an assessment of the project impact, where required.

21 ~~(9)~~
22 (10) A description of the method used to award the contract. If
23 the best value method was used, the report shall describe the factors
24 used to evaluate the bid, including the weighting of each factor
25 and an assessment of the effectiveness of the methodology.

26 ~~(10)~~
27 (11) An assessment of the project impact of “skilled labor force
28 availability.”

29 ~~(11)~~
30 (12) An assessment of the most appropriate uses for the
31 design-build approach.

32 (n) Any city that elects not to use the authority granted by this
33 section may submit a report to the Legislative Analyst’s Office
34 explaining why the city elected not to use the design-build method.

35 (o) On or before January 1, 2015, the Legislative Analyst’s
36 Office shall report to the Legislature on the use of the design-build
37 method by cities pursuant to this section, including the information
38 listed in subdivision (l). The report may include recommendations
39 for modifying or extending this section.

1 (p) Except as provided in this section, nothing in this act shall
2 be construed to affect the application of any other law.

3 (q) Before January 1, 2011, the project limitation of one million
4 dollars (\$1,000,000), as set forth in subdivision (a), shall not apply
5 to any city in the Counties of Solano and Yolo, or to the Cities of
6 Stanton and Victorville.

7 (r) This section shall remain in effect only until January 1, 2016,
8 and as of that date is repealed, unless a later enacted statute, that
9 is enacted before January 1, 2016, deletes or extends that date.

O